Supreme Court, U.S.
FILED
OCT 28 1994
OFFICE OF THE CLERK

No. 94-611

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

S&P COMPANY,
Petitioner,
vs.
ANALEE YORKSHIRE and
INTERNAL REVENUE SERVICE,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MARVIN G. BURNS
Counsel of Record
MICHAEL C. COHEN
DE CASTRO, WEST, CHODOROW & BURNS, INC.
Eighteenth Floor
10960 Wilshire Boulevard
Los Angeles, California 90024-3881
(310) 478-2541

Attorneys for Respondent
ANALEE YORKSHIRE

Lawyers Brief Service • Appellate Brief Printers • (213) 613-1013 • (714) 720-1510

8 pp

No. 94-611

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

S&P COMPANY,
Petitioner,
vs.
ANALEE YORKSHIRE and
INTERNAL REVENUE SERVICE,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MARVIN G. BURNS
Counsel of Record

MICHAEL C. COHEN

DE CASTRO, WEST, CHODOROW & BURNS, INC.

Eighteenth Floor
10960 Wilshire Boulevard
Los Angeles, California 90024-3881
(310) 478-2541

Attorneys for Respondent
ANALEE YORKSHIRE

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

ARGUMENT 2

CONCLUSION 4

TABLE OF AUTHORITIES

Page

Cases

Church of Scientology of California v. Internal Revenue Service, 482 U.S. 9 (1987) 2

Statutes

5 U.S.C. § 552 1

26 U.S.C. §§1361(b) 3

26 U.S.C. §1363(a) 3

26 U.S.C. §1501 *et seq.*. 2,3

26 U.S.C. § 6103(e)(1)(D)(iii) 2,3

No. 94-611

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1994

S&P COMPANY,
Petitioner,
vs.
ANALEE YORKSHIRE and
INTERNAL REVENUE SERVICE,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PRELIMINARY STATEMENT

On June 14, 1993, District Judge Mariana Pfaelzer ordered the Internal Revenue Service ("IRS") to produce to Analee Yorkshire the consolidated tax returns and tax return information of S&P Company, the parent corporation of Keller Street Development Company, in which Ms. Yorkshire is a minority shareholder. Ms. Yorkshire had requested these materials under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The District Court's ruling was affirmed by the Ninth Circuit on June 8, 1994. S&P now petitions this Court for a writ of

certiorari. Ms. Yorkshire objects.[1]

ARGUMENT[2]

There is no reason to grant certiorari in this case. The case does not present any issues of constitutional law and is not in conflict with the opinions of the Supreme Court or any Circuit Court. This case involves the interplay of 26 U.S.C. § 6103(e)(1)(D)(iii), which grants a 1% shareholder of a corporation access to the corporate tax return, with the consolidated return provisions of the Internal Revenue Code, 26 U.S.C. § 1501, *et seq.*, and it is the *only* reported case ever to consider this issue.

S&P claims that the Ninth Circuit's opinion conflicts with *Church of Scientology of California v. Internal Revenue Service*, 482 U.S. 9 (1987), and various Circuit Court opinions. There is no such conflict. All of the cases cited by S&P stand for the proposition that tax returns are confidential unless there is an applicable exception. There is nothing in that proposition which conflicts with an opinion, such as the Ninth Circuit's opinion herein, that interprets the scope of one of the statutorily created exceptions.

---

[1] The arguments set forth herein are substantially identical to the arguments made by Ms. Yorkshire in response to S&P's application to Justice O'Connor for a stay pending disposition of the petition for a writ of certiorari. Justice O'Connor denied the application for stay on October 24, 1994.

[2] Ms. Yorkshire has no objection to the portions of S&P's petition entitled "Questions Presented," "Opinions Below," "Jurisdiction," "Constitutional and Statutory Provisions Involved," and "Statement of the Case."

S&P also errs in its contention that the Ninth Circuit's opinion conflicts with the language in Section 6103(e)(1)(D)(iii) authorizing shareholders of a parent corporation to obtain access to a subsidiary's tax return. There is nothing inconsistent between (A) the statutory provision allowing "downward" access for shareholders regardless of whether a consolidated return is filed and (B) the Ninth Circuit's holding allowing "upward" access for shareholders only when a consolidated return is filed.

S&P also errs in arguing that the Ninth Circuit is mistaken in its reasoning. As recognized by the Ninth Circuit and the District Court, the key analytical point in harmonizing Section 6103(e)(1)(D)(iii) with Section 1501, *et seq.*, is that the filing of a consolidated return is elective. A parent corporation that wishes to prevent a minority shareholder of a subsidiary from having access to the parent's tax information can simply elect not to file a consolidated return. While this may cause the parent corporation not to elect a legal tax minimization strategy, the Internal Revenue Code is replete with elections for which a taxpayer has to take into account countervailing considerations. For example, a corporation considering the election of "Subchapter S" status has to weigh the legal avoidance of corporate tax against various restrictions on the ownership of stock. 26 U.S.C. §§ 1361(b) and 1363(a). Acceptance of S&P's analysis of Section 6103 would eviscerate Ms. Yorkshire's statutory right of access to Keller Street's tax return solely because S&P elected to file a consolidated return.

CONCLUSION

For the reasons set forth above, this Court should deny S&P's petition for a writ of certiorari.

DATED: October 28, 1994.

MARVIN G. BURNS
Counsel of Record

MICHAEL C. COHEN

DE CASTRO, WEST,
CHODOROW & BURNS, INC.

Attorneys for Respondent
ANALEE YORKSHIRE